

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-72
Table of Allotments,)	RM-10399
FM Broadcast Stations.)	
(Nantucket, East Harwich,)	
and South Chatham, Massachusetts))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 16, 2005

Released: February 18, 2005

By the Assistant Chief, Audio Division:

1. The Audio Division issued a *Notice of Proposed Rulemaking* in response to a Petition for Rule Making filed by John Garabedian (“Garabedian”).¹ The *Notice* proposes the allotment of Channel 254B1 at Nantucket, Massachusetts. Garabedian filed comments supporting the allotment of Channel 254B1 at Nantucket. Two parties, Brewster Broadcasting Co. (“Brewster”) and Monomoy Media (“Monomoy”), submitted counterproposals to the allotment at Nantucket. Brewster proposed the allotment of Channel 254A at East Harwich, Massachusetts, and Monomoy proposed the allotment of Channel 254A at South Chatham, Massachusetts.

2. Garabedian filed reply comments asserting that neither East Harwich nor South Chatham are independent communities, as defined under *Tuck*.² He characterizes both East Harwich and South Chatham as small neighborhoods, with no government or school systems. He further alleges that neither East Harwich nor South Chatham collects taxes nor provides fire or police protection. Garabedian states that East Harwich is contained within the town of Harwich and that South Chatham is contained within the town of Chatham.

3. In joint reply comments, Brewster and Monomoy assert that the allotment of Channel 254A at either East Harwich or South Chatham would better serve the public interest than Garabedian’s proposed allotment of Channel 254B1 at Nantucket. Brewster and Monomoy point out that the allotment of Channel 254B1 at Nantucket would provide a fourth local service to that community, whereas the allotment proposals for both East Harwich and South Chatham would provide a first local service. Moreover, Brewster and Monomoy argue that even if East Harwich were considered part of Harwich and South Chatham were considered part of Chatham, the counterproposals still would be superior to the proposed allotment at Nantucket, because Harwich and Chatham currently have only one local service each. Finally, on the basis of the respective populations of East Harwich and South Chatham, Brewster and Monomoy agree that East Harwich is more deserving of a first local service than is South Chatham.

¹ *Nantucket, Massachusetts*, 17 FCC Rcd 5944 (MB 2002) (“*Notice*”).

² *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1088) (“*Tuck*”).

Brewster and Monomoy state jointly that they have no objection to grant of either counterproposal, and both Brewster and Monomoy state the intention to file an application for a construction permit for either community.

4. In evaluating mutually exclusive allotment proposals, we compare the proposed arrangements of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ Under that analysis, Brewster and Monomoy are correct that a first local allotment to a qualifying community, meeting allotment priority three, should be preferred over the allotment of a fourth local service to Nantucket, which could satisfy, at best, only allotment priority four. We thus must determine whether East Harwich and South Chatham qualify as communities for allotment purposes.

5. Garabedian erroneously applies the standards of *Tuck* to the situation presented in this rulemaking, where we are presented with three mutually exclusive proposals for new allotments at three different communities. *Tuck* applies only to a proposed relocation of an existing station, and then only if the relocation would place a city grade signal over 50 percent or more of an urbanized area. In this proceeding, no relocation is proposed, and none of the proposals would provide 50 percent or more signal coverage to any urbanized area. Accordingly, we need only find that a proposed allotment location qualifies as a “community” for allotment purposes.

6. For allotment purposes, we generally consider the standard for a “community” to be met if the community is either incorporated or listed in the census reports as a community.⁴ Brewster has shown that East Harwich is a census designated place with a 2000 population of 4,744 persons. In addition, Brewster demonstrates that East Harwich has a local fire station, several churches, and dozens of retailers and restaurants. We find that East Harwich is a community for allotment purposes, deserving of its own local aural transmission service. As to South Chatham, although Monomoy cites 1990 census statistics showing South Chatham with a population of 840 persons, South Chatham is not listed in the 2000 census. South Chatham’s qualification as a community for allotment purposes is therefore dubious, but we need not make that determination here. Even accepting Monomoy’s statement of South Chatham’s population, East Harwich is clearly much larger than South Chatham, and is therefore more deserving of a first local service. For all of these reasons, we find that Channel 254A should be allotted at East Harwich, Massachusetts. Channel 254A can be allotted at East Harwich with a site restriction of 5.7 kilometers (3.5 miles) southeast of East Harwich, at the following reference coordinates: 41-40-33 North Latitude and 69-58-03 West Longitude.

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁵

³ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 101.

⁵ See 5 U.S.C. 801 (a)(1)(A).

8. Accordingly, IT IS ORDERED, That effective April 4, 2005, the FM Table of Allotments, 47 U.S.C. Section 73.202(b), IS AMENDED as follows:

<u>Community</u>	<u>Channel Number</u>
East Harwich, Massachusetts	254A

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

John Garabedian
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(Counsel for Monomoy Media)

10. A filing window period for Channel 254A at East Harwich, Massachusetts, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau